

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Michael D. McCain, :
Plaintiff : Civil Action 2:10-cv-00791
v. : Judge Graham
Chief Inspector Mona Parks, *et al.*, : Magistrate Judge Abel
Defendants :
:

ORDER

Plaintiff Michael D. McCain, an inmate at London Correctional Institution, brings this prisoner civil rights action under 42 U.S.C. §1983. The complaint alleges that medical providers at the prison subjected McCain to cruel and unusual punishment by denying him pain medication and that prison grievance officers did not intervene on his behalf. This matter is before the Court on plaintiff McCain's September 21, 2010 objections (doc. 8) to Magistrate Judge Abel's September 7, 2010 Report and Recommendation that defendants Chief Inspector Mona Parks, Inspector Blackwell, and Nurse Practitioner Jane Doe should be dismissed because the complaint fails to state a claim against them. The Report and Recommendation further recommends that the suit continue as to plaintiff's claims against defendants LoCI Medical Director Rumer, Dr. Woods, and Dr. Flurini. For the reasons that follow, the Court overrules the objections and adopts the Report and Recommendation.

The allegations in the complaint were fairly summarized by the Magistrate Judge

as follows:

[I]n April 2009, at the Mansfield Correctional Institution, plaintiff McCain's pain medication was increased to 250 mg. of Altram (apparently Ultram, which is Tramadol, a medication for moderate to severe pain) a day (in doses of 100 mg. and 50 mg.) and 2,400 mg. of nurotin (apparently Neurontin, which is Gabapentin, an anticonvulsant that also relieves postherpetic neuralgia) (1,200 mg. twice a day). In late May 2009, McCain was transferred to LoCI, where Dr. Forini eliminated the Ultram and decreased the Neurontin to 800 mg. a day. In July 2009, McCain was seen by O.S.U. doctors at C.M.C. They recommended Ultram, 100 mg., 3 times a day and Neurontin, 800 mg., 3 times a day. Back at LoCI, the doctors prescribed 50 mg. of Ultram, 3 times a day, and 800 mg. of Neurontin, 3 times a day. The complaint alleges that these dosages were ineffective and McCain remained in pain. He filed a grievance and Inspector Blackwell and Chief Inspector Parks denied it.

Dr. Woods, Dr. Flurini and LoCI Medical Department Director Rumer are all alleged to have participated in denying McCain medication that would have addressed his pain. Their motivation, at least in part, is alleged to have been to reduce the cost of providing the medication.

September 7, 2010 Report and Recommendation, at pp. 2-3.

Plaintiff McCain states that he did not intend to name Nurse Jane Doe as a defendant, and he does not object to her being dismissed from the lawsuit. He does argue that Inspector Blackwell and Chief Inspector Parks knew that he had been denied needed pain medication but failed to intervene and force his medical providers to make the medication available to him.

However, plaintiff cites no law in support of his position. Blackwell and Parks are not medical providers. Their role is to listen to inmate grievances and make recommendations to the appropriate prison officials for their disposition. This Court is bound by Sixth Circuit case law that prison officials whose only roles "involve their denial of administrative grievances and their failure to remedy the alleged retaliatory

behavior" are not liable under §1983. *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999); *see also Bellamy v. Bradley*, 729 F.2d 416, 421 (6th Cir. 1984); *Hays v. Jefferson County*, 668 F.2d 869, 874 (6th Cir. 1982). The fact that they might have acted to remedy the alleged cruel and unusual punishment does not, under the case law, render them liable. Only the prison employees who are alleged to have intentionally subjected McCain to cruel and unusual punishment by denying him needed pain medication may be named defendants.

Upon *de novo* review in accordance with the provisions of 28 U.S.C. §636(b)(1)(B), the Court **ADOPTS** the Report and Recommendation.

Defendants Chief Inspector Mona Parks, Inspector Blackwell, and Nurse Practitioner Jane Doe are hereby **DISMISSED**. This action continues as to defendants LoCI Medical Director Rumer, Dr. Woods, and Dr. Flurini.

It is so ORDERED.

s/James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: September 24, 2010